

and time again, the court could have set the injunction aside without any consideration of the merits. However, a careful consideration of the merits had only supported the view that the injunction ought to be set aside with costs and an inquiry be held to ascertain damages suffered by the defendant consequent to the grant of the injunction to the plaintiff. Accordingly, the court had granted the defendant's application with costs and had directed that damages are to be assessed by the learned Senior Assistant Registrar.

a YEO AH TEE @ YEO SOON SENG

V.

LEE YONG HENG & 3 ORS.

HIGH COURT, JOHOR BAHRU
DATUK L.C. VOHRAH J.
b [CIVIL SUIT NO. 22-93 OF 1989]
8 OCTOBER 1992

c PRACTICE AND PROCEDURE: Taxation of costs - Defendants allowed getting-up fee in respect of earlier application - Plaintiff withdrawing suit - Whether defendants entitled to getting-up fees again.

The plaintiff's application for an interlocutory injunction was dismissed with costs wherein the learned judge allowed a sum of RM3,500 as getting-up fee. The plaintiff subsequently applied to withdraw the suit against the first, second and third defendants which application was allowed with costs to the three defendants.

In taxing the bill of costs, the SAR allowed a sum of RM5,000 for getting-up of the case in defending the suit.

e Counsel for the plaintiff contended that since one getting-up fee had already been allowed, there ought in principle not be another getting-up fee in respect of the action which was withdrawn.

Held:

f [1] The statement of claim, apart from asking for the injunction also sought a declaration that an order granted by the court in an earlier action was null and void, on the ground, *inter alia*, of fraud which required consideration of the law in respect of fraud.

g [2] Much more work had been done for the defence of the action generally than for the defence of the application for the interlocutory injunction.

h [3] Where proceedings in an action have reached a stage when a hearing in open court is inevitable, the solicitors of the parties are entitled to be in readiness for the hearing and must be compensated for the work done irrespective of whether there was actually a hearing in open court or not.

i [Plaintiff's application for review of the SAR's decision dismissed with costs].

Cases referred to:*Lee Bang v. Nadzri* [1965] 2 MLJ 186 (*refd*)*For the Plaintiff - Gana Muthusamy; M/s. Gana Muthusamy & Co.**For the defendants K.T. Tan; M/s. Tan & Tan***JUDGMENT****L.C. Vohrah J:**

On 14 May 1989 V.C. George J. dismissed with costs the plaintiff's application for an interlocutory injunction to restrain the defendants from dealing with a piece of land which was the subject matter of the suit. The bill of costs relating to this application for the injunction was taxed by the Senior Assistant Registrar and an appeal was lodged against the amount allowed by the Senior Assistant Registrar for the getting-up fee in respect of this application and the appeal was allowed on 6 August 1990 when the learned Judge reduced the amount from RM6, 000 to RM 3,500.

On 8 January 1992 I granted an order in terms of the plaintiff's application for leave to withdraw the whole suit against the first, second and third defendants and made an order specifically for costs of the suit to be paid to the three defendants. In the taxing of these costs, the Senior Assistant Registrar allowed the sum of RM5,000 for the getting-up of the case in defending the suit.

It is the contention of Counsel for the plaintiff that since one getting-up fee has already been allowed to the defendants in respect of his unsuccessful application for an interlocutory injunction there ought in principle not be another getting-up fee in respect of the action which was withdrawn. Of the two cases cited by Counsel in support of his contention I find only the case of *Lee Bang v. Nadzri* [1965] 2 MLJ 186 of any real relevance for the purpose of this appeal. The facts of that case were that on 6 April 1964 the plaintiff filed a writ in the High Court at Ipoh against the defendant claiming damages for personal injuries arising out of a motor accident. The writ was duly served and the defendant failing to enter appearance the plaintiff took out a motion for judgment in default of appearance returnable on 20 July 1964. The defendant entered appearance on 16 July 1964 and paid RM4,000 into Court in satisfaction of the plaintiff's claim. Consequently when the motion came up for hearing on 20 July 1964 an order was made

- a* on the motion but the Court ordered that the costs be costs in the cause. On the taxing of the plaintiff's bill of costs under the earlier Rules of the Supreme Court 1957 the Senior Assistant Registrar disallowed the claim for RM500 for getting-up in respect of the motion for judgment and also the claim for RM850 for getting-up generally. On appeal to the Judge in Chambers, it was held that a getting-up fee could not be charged twice, once for getting-up on the motion and again for getting-up the case generally and the case was remitted to the Senior Assistant Registrar to assess the getting-up fee for the case generally. The learned Judge on the facts of the case did not interfere with the decision of the Senior Assistant Registrar disallowing the fee for getting-up the motion under item 37 on the ground that a getting-up fee could not be charged twice, once under item 37 for getting-up the motion and again under item 40 for getting-up the case generally, since all the getting-up that the plaintiff's Solicitors were obliged to do on default of an entry of appearance was to procure the necessary evidence, attend upon witnesses and consider the law in order to assist the Court to assess the quantum of general damages.
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- e* Besides in an action for damages for personal injury the plaintiff's Solicitors would have perforce to consider the facts and law to determine whether the action should be brought in the High Court or a Subordinate Court and the costs thus incurred could not be charged for work done in connection with a motion. The learned Judge in that case had occasion then to re-affirm the principle that where proceedings in an action have reached a stage when a hearing in open Court is inevitable the Solicitors of the parties are entitled to be in readiness for the hearing and must be compensated for the work done irrespective of whether there was actually a hearing in open court or not. That case did not lay down a rule to the effect that once a getting-up fee has been allowed the defendants in defending an interlocutory application for a limited remedy, such as an interim injunction in an action, that allowance *ipso facto* bars the successful defendant from claiming a separate getting-up fee in respect of the suit proper which may have prayers for several remedies.
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- g*
- h*

- i* In the present appeal the statement of claim, apart from asking for the injunction prayed for a declaration that an order granted by the

Court in an earlier action was null and void on the ground, *inter alia*, of fraud, a prayer which required consideration of the law in respect of fraud and not only of that confined to injunctions. I think it was proper for the Senior Assistant Registrar to have allowed a separate getting-up for the action generally as was specifically ordered by me when I granted leave for the suit to be withdrawn because I was of the considered opinion that much more work had been done for the defence of the action generally than for the defence of the particular application for the interlocutory injunction. This application for review is accordingly dismissed with costs.

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